

Exhibit N

Russillo, Thomas

January 8, 2009

Irvine, CA

1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY) MDL No. 1456
AVERAGE WHOLESALE PRICE) Master File No.
LITIGATION) 01-12257-PBS

_____)
)
THIS DOCUMENT RELATES TO:) VIDEOTAPED
) DEPOSITION OF
United States of America ex rel.) THOMAS RUSSILLO
Ven-a-Care of the Florida Keys,)
Inc., v. Boehringer Ingelheim) JANUARY 8, 2009
Corp. et al., Civil Action No.)
07-10248-PBS, and The City of)
New York et al. v. Abbott)
Laboratories et al., Civil)
Action No. 03-10643-PBS.)
_____)

(Cross-noticed captions on following pages.)

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26 (Pages 98 to 101)

<p style="text-align: right;">98</p> <p>1 Q Is it consistent with your recollection that</p> <p>2 you and Mr. Waterer reviewed and recommended AWP</p> <p>3 changes for the multisource line of products?</p> <p>4 A I don't recall doing that. No.</p> <p>5 Q You don't recall doing what?</p> <p>6 A Recommending AWP changes.</p> <p>7 Q Do you recall approving AWP changes?</p> <p>8 A I do.</p> <p>9 Q Did you ever ask anyone at Boehringer</p> <p>10 Ingelheim to sign off on an AWP change that you</p> <p>11 were involved with?</p> <p>12 MS. RIVERA: Object to form.</p> <p>13 THE WITNESS: There would have been -- it</p> <p>14 would have been at my discretion. I would have</p> <p>15 asked Werner Gerstenberg, if I thought there was a</p> <p>16 sensitive AWP issue.</p> <p>17 Q BY MR. FAUCI: Is there anyone else you</p> <p>18 would have talked to about a sensitive AWP issue?</p> <p>19 A No.</p> <p>20 Q What would make an AWP issue sensitive?</p> <p>21 A Well, at this time --</p> <p>22 MS. RIVERA: Hold on. Object to form.</p>	<p style="text-align: right;">100</p> <p>1 team?</p> <p>2 A It's -- it was rolled into the PAC, I</p> <p>3 believe, at this point in time.</p> <p>4 Q And the permanent members: Do you see</p> <p>5 those?</p> <p>6 A Yes, I do.</p> <p>7 Q "Ciarelli, Diez, Ellexson, Hankins, King,</p> <p>8 Powers, Sykora, Terrillion, Marketing Controller</p> <p>9 Elizabeth Cochran."</p> <p>10 A Yes.</p> <p>11 Q Who are each of those people, to the best of</p> <p>12 your recollection? Which companies did they work</p> <p>13 for?</p> <p>14 I can make it easier. Did any of those</p> <p>15 people work for Roxane Laboratories post-June 2000?</p> <p>16 A I don't know for sure. John Powers and Bob</p> <p>17 Sykora were Roxane -- I think were Roxane</p> <p>18 employees.</p> <p>19 Q Were the rest of those BIPI employees?</p> <p>20 A They were on the brand side. I would</p> <p>21 imagine they were BIPI.</p> <p>22 Q The third bullet point down, it says,</p>
<p style="text-align: right;">99</p> <p>1 THE WITNESS: At this point in time, I was</p> <p>2 very sensitive to the AWP litigation that was</p> <p>3 floating around.</p> <p>4 Q BY MR. FAUCI: So as of the late 1990s, you</p> <p>5 were aware that there was investigations into</p> <p>6 inflated AWP's?</p> <p>7 A Yes, I was.</p> <p>8 Q Let's turn to the first page of the exhibit,</p> <p>9 of the attachment, where it says, "Impact of June</p> <p>10 2000, BU Reorganization on PAC Process."</p> <p>11 A Yes.</p> <p>12 Q Was there a reorganization of the business</p> <p>13 unit in or around June 2000?</p> <p>14 A Yes, there was.</p> <p>15 Q What was the result of that?</p> <p>16 A The result of that was, as best I recall,</p> <p>17 the pricing decision committees, as you've shown me</p> <p>18 in the previous things, were implemented on the</p> <p>19 brand side, and we were left pretty much on the</p> <p>20 side to do our own thing, on the multisource side.</p> <p>21 Q Turn to page 4 of the document, where it</p> <p>22 says "PTC Team Post-June 2000." What is the PTC</p>	<p style="text-align: right;">101</p> <p>1 "G. Ciarelli, H. Diez, and J. King to collaborate</p> <p>2 to provide leadership to team and make final calls</p> <p>3 on difficult decisions."</p> <p>4 A Yes.</p> <p>5 Q "If a decision cannot be made, the issues</p> <p>6 are brought to S. Berkle."</p> <p>7 A Yes.</p> <p>8 Q Do you see that?</p> <p>9 A Yes.</p> <p>10 Q Would those difficult decisions have to do</p> <p>11 with Roxane multisource products?</p> <p>12 A No.</p> <p>13 Q What about Roxane's branded generic</p> <p>14 products?</p> <p>15 MS. RIVERA: Object to form, foundation.</p> <p>16 THE WITNESS: I believe they could. I don't</p> <p>17 know how they handled those.</p> <p>18 Q BY MR. FAUCI: Page 6 of the same exhibit</p> <p>19 says "PTC and Multisource." Do you see that?</p> <p>20 A Yes.</p> <p>21 Q "Multisource is addressed by the PTC team</p> <p>22 only when administrative, legal, and government</p>

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45 (Pages 174 to 177)

<p style="text-align: right;">174</p> <p>1 called Werner Gerstenberg and told him what I</p> <p>2 thought was going on and what I thought should be</p> <p>3 done. And then he would have either agreed or</p> <p>4 disagreed.</p> <p>5 Q So do you think you consulted with Werner</p> <p>6 Gerstenberg about the decision as to whether or not</p> <p>7 to raise AWP's for Roxane?</p> <p>8 A Don't recall.</p> <p>9 Q For furosemide, I apologize.</p> <p>10 A I don't recall.</p> <p>11 Q In the top e-mail from Ms. Waterer, the</p> <p>12 second paragraph down, she writes, "You've</p> <p>13 indicated that AWP on furosemide is critical now</p> <p>14 and that we'd have real business opportunities if</p> <p>15 we could change it. As you've been informed, Tom</p> <p>16 is prepared to take furosemide up the line."</p> <p>17 Do you see that?</p> <p>18 A Yes.</p> <p>19 Q Who would you be taking furosemide up the</p> <p>20 line to?</p> <p>21 A I believe she's referring to that if I</p> <p>22 needed to, I would take it up the line.</p>	<p style="text-align: right;">176</p> <p>1 A There were thousands of Roxane employees --</p> <p>2 oh, in Connecticut. Sorry.</p> <p>3 Q Based in Connecticut.</p> <p>4 A Roxane actual employees. Let me think about</p> <p>5 that. There actually may have been a couple.</p> <p>6 We had a number of situations where people</p> <p>7 worked for a subsidiary but were officed other</p> <p>8 places, so there may have been. I can't think</p> <p>9 right now of any.</p> <p>10 Q Can't think of any off the top of your head?</p> <p>11 A Not specifically, no.</p> <p>12 Q I'm going to show you Exhibit 26.</p> <p>13 (Exhibit Russillo 026 is marked.)</p> <p>14 Q BY MR. FAUCI: Take a moment to familiarize</p> <p>15 yourself with this e-mail, but my questions will</p> <p>16 just be focusing on the top couple lines.</p> <p>17 A Okay.</p> <p>18 Q The e-mail I'm going to focus your attention</p> <p>19 on is from Tom Russillo, dated July 7, to Bob</p> <p>20 Sykora, Judy Waterer, Richard Feldman.</p> <p>21 Do you see that in this e-mail you were</p> <p>22 responding to the e-mail we just discussed in</p>
<p style="text-align: right;">175</p> <p>1 Q To who?</p> <p>2 A Werner Gerstenberg.</p> <p>3 Q Anyone else?</p> <p>4 A No.</p> <p>5 Q Where is Werner Gerstenberg based?</p> <p>6 A Connecticut.</p> <p>7 Q What was his job function?</p> <p>8 A He was the CEO of -- now, let's take it in</p> <p>9 respect. In this particular case, he would have</p> <p>10 been acting as the president of Roxane.</p> <p>11 Q Was he also the president of other</p> <p>12 Boehringer Ingelheim companies?</p> <p>13 A Yes, he was.</p> <p>14 Q Which companies, to your knowledge?</p> <p>15 A I believe he was the president of BIC.</p> <p>16 Q Which was the parent company based in</p> <p>17 Connecticut?</p> <p>18 A Yes.</p> <p>19 Q Can you think of any other Roxane employees</p> <p>20 that were based in Connecticut?</p> <p>21 A Can I think of any?</p> <p>22 Q Yeah.</p>	<p style="text-align: right;">177</p> <p>1 Exhibit 25, where Mr. Sykora was discussing the AWP</p> <p>2 increase for furosemide?</p> <p>3 A It would appear that's correct. Yes.</p> <p>4 Q Can you read your response?</p> <p>5 A "Bob, I assure you it's real. To get the</p> <p>6 approval we need from Connecticut, though, we need</p> <p>7 some hard info. Don't shoot the messenger. Judy</p> <p>8 is only doing what I asked her to do. Rich can</p> <p>9 assure you of the mood in BI."</p> <p>10 Q Does "Connecticut" mean Boehringer</p> <p>11 Ingelheim?</p> <p>12 MS. RIVERA: Object to form.</p> <p>13 THE WITNESS: It could mean Boehringer</p> <p>14 Ingelheim. I suspect it does here.</p> <p>15 Q BY MR. FAUCI: What approval would you need</p> <p>16 from Boehringer Ingelheim?</p> <p>17 MS. RIVERA: Object to form.</p> <p>18 THE WITNESS: I believe Judy was under the</p> <p>19 impression that I needed approval, and I may have</p> <p>20 told her that so that she wouldn't just be</p> <p>21 bombarding me with requests.</p> <p>22 Q BY MR. FAUCI: Just to be clear, who wrote</p>

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49 (Pages 190 to 193)

<p style="text-align: right;">190</p> <p>1 A I do.</p> <p>2 Q Did you have any concern with raising the</p> <p>3 AWP's for this product to a level more than 14 times</p> <p>4 higher than the average contract price?</p> <p>5 MS. RIVERA: Object to form.</p> <p>6 THE WITNESS: No, because it was the same</p> <p>7 AWP as Mylan.</p> <p>8 Q BY MR. FAUCI: So as long as Mylan's AWP was</p> <p>9 high, that high, it was okay?</p> <p>10 MS. RIVERA: Object to form.</p> <p>11 THE WITNESS: "High" is a word -- I don't</p> <p>12 use the word "high."</p> <p>13 Q BY MR. FAUCI: What if Mylan's AWP was \$300?</p> <p>14 MS. RIVERA: Jeff, you've got to let him</p> <p>15 finish his answer.</p> <p>16 Q BY MR. FAUCI: I apologize. Finish it.</p> <p>17 A Okay. It doesn't matter what the number is.</p> <p>18 We were trying to be competitive. If Mylan's AWP</p> <p>19 is \$300, we probably would have raised it to \$300</p> <p>20 to be competitive.</p> <p>21 Q Do you think it mattered to Medicaid and</p> <p>22 Medicare agencies what the AWP was?</p>	<p style="text-align: right;">192</p> <p>1 this is a decision that you would have taken to</p> <p>2 Werner Gerstenberg?</p> <p>3 A Based on the data that I've seen here and</p> <p>4 the quick review, I would say I probably did not.</p> <p>5 Q What was the type of decision you would take</p> <p>6 to him?</p> <p>7 A If we were raising an AWP without adequate</p> <p>8 justification, meaning I didn't see a competitor's</p> <p>9 analysis that showed we were just blending in with</p> <p>10 the rest.</p> <p>11 Q So with knowledge the AWP investigations</p> <p>12 were going on, and with knowledge that this AWP</p> <p>13 increase raised the AWP's to 14 times the average</p> <p>14 contract price, that would not have been reason for</p> <p>15 you to go to Mr. Gerstenberg and say, "Is this</p> <p>16 okay?"</p> <p>17 A I can't answer your question exactly,</p> <p>18 because this -- as you've seen from the e-mail</p> <p>19 trails on this and others, there were a number of</p> <p>20 these going on.</p> <p>21 Once I had established Werner Gerstenberg's</p> <p>22 position on this, I would have implemented it.</p>
<p style="text-align: right;">191</p> <p>1 MS. RIVERA: Object to form, foundation.</p> <p>2 Calls for speculation.</p> <p>3 Q BY MR. FAUCI: You're aware that Medicaid</p> <p>4 and Medicare relied on AWP's in setting their</p> <p>5 reimbursement. You've already testified to that;</p> <p>6 correct?</p> <p>7 A I testified that they relied on a discount</p> <p>8 from AWP for setting their reimbursement.</p> <p>9 Q Do you think it mattered to Medicare and</p> <p>10 Medicaid what the AWP's were?</p> <p>11 MS. RIVERA: Object to form and foundation.</p> <p>12 THE WITNESS: I suppose it mattered.</p> <p>13 Q BY MR. FAUCI: But it didn't matter to</p> <p>14 Roxane?</p> <p>15 A Well, what mattered most --</p> <p>16 MS. RIVERA: Object to form.</p> <p>17 THE WITNESS: -- was their discount, not the</p> <p>18 AWP.</p> <p>19 Q BY MR. FAUCI: Now that we've looked a</p> <p>20 little bit into the actual decision to raise AWP's</p> <p>21 and your approval of that decision, does any of</p> <p>22 this refresh your recollection as to whether or not</p>	<p style="text-align: right;">193</p> <p>1 So -- and I don't remember eight years ago how</p> <p>2 concerned he was.</p> <p>3 I might have brought it to him. I don't</p> <p>4 think I did, because we've had others before that.</p> <p>5 I knew where he stood.</p> <p>6 Q Would you have done this without feeling</p> <p>7 comfortable that Mr. Gerstenberg was okay with it?</p> <p>8 A I can't tell you at the time. I don't know</p> <p>9 whether I went to him or not.</p> <p>10 Q You said you knew where he stood. What do</p> <p>11 you mean by that?</p> <p>12 A I knew that his position was if we were</p> <p>13 meeting competitors, to stay competitive and that's</p> <p>14 why we were raising the AWP, we would not be</p> <p>15 perceived as taking advantage of the AWP.</p> <p>16 Q Where did you get that understanding of</p> <p>17 Mr. Gerstenberg's position from?</p> <p>18 A Over many conversations with him.</p> <p>19 Q Did you have those -- was anybody else</p> <p>20 involved in those conversations?</p> <p>21 A There may have been. I don't -- I don't</p> <p>22 recall the specific conversations.</p>

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